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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,025	06/19/2003	Frank R.G. Duquesne	17394	5694

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CNH AMERICA LLC  
INTELLECTUAL PROPERTY LAW DEPARTMENT  
700 STATE STREET  
RACINE, WI 53404

EXAMINER

PETRAVICK, MEREDITH C

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/600,025	<b>Applicant(s)</b> DUQUESNE ET AL. <i>E</i>	
	<b>Examiner</b> Meredith C Petravick	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8, 10 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 9, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/19/2003</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 limits the hinged portion and the bridging means to be integral with the concave. However, parts that are integral are formed in one piece. In claim 1, the hinged portion and the bridging means are attached to the concave so that they pivot. They are not formed in one piece with the concave. This would not allow them to move. The hinged portion, bridging means are attached to the concave but are not integral with the concave in the specification. Since it is unclear what applicant is trying to claim, this claim will not be further treated on the merits.

Claim 3, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. The clause starting with such as was not considered for first action upon the merits. See MPEP § 2173.05(d).

Claims 7, 8 and 10 all include clauses that begin with "preferably." This causes the claim to be indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. The clause starting with preferably was not considered for first action upon the merits.

Art Unit: 3671

Regarding claim 16, the phrase "for example" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kersting 5,743,795.

Kersting discloses a concave arrangement including:

- a first stage with a concave, having a hinged portion (6), and a rotary member (3)
- a second stage (includes part 16)
- a bridging means (21)

The hinged position varies the distanced between the hinged portion and the rotary member (Fig. 3 and Fig. 4). The bridging means is pivotally moveable jointly with the hinging portion ((Fig. 3 and Fig. 4). The bridging means substantially closes the gap between the first and second stage.

Regarding claim 3, the bridging means (21) is constrained to rotate about a pivot (22).

Art Unit: 3671

Regarding claim 4, the concave and hinged portion move as an assembly towards or away from the rotary member (Fig. 3 and Fig. 4).

Regarding claims 13-15, the concave includes a third stage (Fig. 1). The first stage apparatus is a thresher (2) and the second stage includes a beater (Fig. 1).

Regarding claim 16, the hinged portion varies the break-over angle between the two stages (Fig. 3 and Fig. 4).

***Allowable Subject Matter***

5. Claims 5-6, 9 and 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 7-8, 10 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

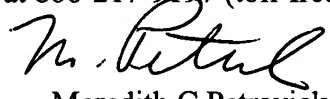
Art Unit: 3671

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C Petravick whose telephone number is 703-305-0047.

The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Meredith C Petravick  
Primary Examiner  
Art Unit 3671

December 19, 2004